

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,	)	
PLAINTIFF	)	
	)	
v.	)	C.A. No. 04-30126-MAP
	)	
CARDIAC SCIENCE, INC.,	)	
ET AL.,	)	
DEFENDANTS	)	

MEMORANDUM AND ORDER REGARDING CROSS  
MOTIONS FOR SUMMARY JUDGMENT  
AND OTHER MISCELLANEOUS RELIEF

(Dkt. Nos. 66, 67, 87, 105, 120, 127, 129, 134, 139, 141,  
149, 151, 154, 163, 165, 170, 175, 187, and 198)

September 27, 2006

PONSOR, D.J.

I. INTRODUCTION

This is a suit brought by pro se Plaintiff Donald C. Hutchins against Cardiac Science, Inc. ("Cardiac Science") and Compliant Corporation ("Compliant"). Plaintiff alleges that Cardiac Science is liable for copyright and patent infringement, abuse of process, and tortious interference with contract, and that Compliant is liable for fraud, fraudulent misappropriation and sale of patent, and breach of contract. Defendants deny Plaintiff's allegations and have asserted counterclaims seeking damages for breach of

contract, abuse of process, tortious interference with contract, and interference with prospective advantage.

On January 4, 2006, the court heard argument on nine motions, including Compliant's and Plaintiff's respective motions for summary judgment.<sup>1</sup> Since oral argument, Plaintiff has filed a number of additional motions, as well as an amended notice of removal of Compliant Corp. v. Donald C. Hutchins, et al., Hampden County Superior Court Civil Action No. 05-1115 ("the Hampden County collection action") and a second amended complaint. Compliant, the plaintiff in the Hampden County collection action, opposes removal and has filed a motion to remand. Compliant has also moved to strike Plaintiff's second amended complaint.

For the reasons set forth below, the court will: allow

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<sup>1</sup> On June 23, 2005, the court allowed Cardiac Science's motion for summary judgment on every claim brought against it by Plaintiff and every declaratory judgment claim brought by Cardiac Science against Plaintiff. Citing Fed. R. Civ. P. 60(b)(3), Plaintiff has filed a motion for relief from the court's refusal to reconsider this ruling. (See Dkt. No. 108.)

This motion will be considered in a forthcoming memorandum and order in connection with two other motions concerning Cardiac Science: Plaintiff's motion for relief from an order denying his motion for a temporary restraining order (Dkt. No. 107); and Plaintiff's motion for sanctions against counsel for Cardiac Science (Dkt. No. 191).

Compliant's Motion for Summary Judgment (Dkt. No. 66); deny Compliant's Motion for Default Judgment (Dkt. No. 67); deny Plaintiff's Motion for Summary Judgment (Dkt. No. 87); deny Plaintiff's Motion for Declaratory Judgment (Dkt. No. 105); deny, as moot, Plaintiff's Motion to Enjoin Cardiac Science to Disclose the Identity of the Current Licensee (Dkt. No. 120); deny, as moot, Plaintiff's Motion to Join Stradling, Yocca, Carlson & Rauth (Dkt. No. 127); deny Plaintiff's Motion to Join Steven Lindseth (Dkt. No. 129); deny, as moot, Plaintiff's Motion for Removal (Dkt. No. 134); deny Plaintiff's Motion to Schedule a Jury Trial (Dkt. No. 139); deny Plaintiff's Motion to Strike (Dkt. No. 141); allow Compliant's Motion to Remand (Dkt. No. 149); deny Plaintiff's Second Motion for Declaratory Judgment (Dkt. No. 151); deny Plaintiff's Motion to Join CPR Limited Partnership ("CPR L.P.") (Dkt. No. 154); allow Plaintiff's Motion to Withdraw his Motion to Join Stradling, Yocca, Carlson & Rauth (Dkt. No. 163); deny Plaintiff's Motion for Sanctions against Counsel for Compliant (Dkt. No. 165); deny Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 170); deny Plaintiff's Motion to join Axentis LLC

("Axentis") (Dkt. No. 175); deny Plaintiff's Motion to Define Compliant (Dkt. No. 187); and allow Compliant's Motion to Strike Plaintiff's Second Amended Complaint (Dkt. No. 198).

## II. FACTUAL AND PROCEDURAL BACKGROUND

The court will begin by addressing Compliant's Motion for Summary Judgment; the facts below therefore appear in the light most favorable to Plaintiff, the non-moving party. See Teraqram Corp. v. Marketwatch.com, Inc., 444 F.3d 1, 8 (1st Cir. 2006) (citation omitted).<sup>2</sup>

On June 1, 1994, Plaintiff and his closely-held company, CPR Prompt Corporation ("CPR Prompt"), entered into a license agreement (the "License Agreement") with County Line Limited Partnership ("County Line"), a venture company under the direction of Jon and Steven Lindseth. (See Dkt. No. 91, Martinelli Aff.) Under the terms of this agreement,

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<sup>2</sup> Given Plaintiff's pro se status, the court, in creating this factual summary, has "attempted to parse the record and set forth the facts as favorable to [Plaintiff] as h[is] filings permit." Swallow v. Fetzer Vineyards, 46 Fed. Appx. 636, 639 (1st Cir. 2002) (citation omitted). That being said, "conclusory allegations, improbable inferences, and unsupported speculation" have not been considered. Galloza v. Foy, 389 F.3d 26, 28 (1st Cir. 2004) (citation omitted). In addition, uncontroverted, material facts of record set forth by Compliant have been deemed admitted pursuant to Local Rule 56.1.

Plaintiff and his company provided County Line with an exclusive license to various intellectual properties, including CPR Prompt® -- a device designed to instruct individuals in the performance of cardiopulmonary resuscitation.<sup>3</sup> (See Dkt. No. 91, Ex. E, License Agreement.)

In return, Plaintiff received an up-front payment of \$100,000 and royalty payments on CPR Prompt® sales. (Id. at §§ 3.1-3.4.) Pursuant to § 3.10 of the License Agreement, County Line also agreed to assign its interest to an

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<sup>3</sup> CPR Prompt® is the embodiment of U.S. Patent No. 4,583,524 ("the '524 patent"), which the U.S. Patent and Trademark Office ("PTO") issued to Plaintiff on April 22, 1986. The device is also claimed in U.S. Patent Reexamination No. 34,800 ("the '800 patent"), which the PTO issued to Plaintiff on November 29, 1994.

In addition, Plaintiff owns U.S. Patent No. 5,913,685 (filed June 24, 1996) (issued June 22, 1999) ("the '685 patent"), which discloses an electronic device "to provide guidance to rescue personnel trained in CPR for resuscitating a victim under an emergency condition." '685 patent, col.9 ll.46-48.

Plaintiff also holds one trademark registration -- "CPR Prompt" -- and two copyright registrations -- U.S. Copyright No. TX-u-210-208, which covers the device's script and word list, and U.S. Copyright No. TX-u-213-859, which pertains to its assembler software program -- that are relevant to this litigation.

"Affiliate"<sup>4</sup> that would

cause each partner of such Affiliate who purchases or otherwise acquires a partnership interest of such Affiliate directly from such Affiliate to agree to pay CPR-PROMPT seven and one-half percent (7.5%) of the net proceeds of any sale of any or all of such partnership interest to any person or entity which is not an Affiliate to such partner.

(License Agreement § 3.10 (noting that "[i]f such Affiliate conducts a public offering . . . , no person or entity purchasing stock in such offering or from such Affiliate thereafter shall be required to agree to make such payments").)

On September 19, 1994, County Line assigned all of its rights and obligations under the License Agreement to CPR L.P.,<sup>5</sup> an Ohio entity that initially had two partners:

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<sup>4</sup> (See License Agreement § 1.1 (defining "Affiliate" as "any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with first mentioned person or entity").)

<sup>5</sup> (See Dkt. No. 66, Ex. C, Lindseth Aff., Ex. 1, Agreement of Limited Partnership.) Plaintiff maintains that he has never acknowledged or agreed to this assignment. (See Dkt. No. 84, Pl.'s Mem. Controverting Compliant's Statement of Undisputed Facts 2 (noting that although the September 19, 1994 assignment included two lines for Plaintiff's signature, Plaintiff did not sign the document); see also Dkt. No. 40., Pl.'s Am. Compl. ¶ 30 ("Hutchins never signed or accepted the validity of the Agreement dated September 19, 1994.")).

Compliant takes the position that the License Agreement did not require Plaintiff's acknowledgment or agreement.



Catalog Products, Inc. ("Catalog Products"), a 1% limited partner, and County Line itself, the 99% general partner.<sup>6</sup>

In December, 1997, County Line's corporate successor<sup>7</sup> transferred its general partnership interest in CPR L.P. to CPR Prompt LLC, which subsequently converted to Compliant, a Delaware corporation. Like the previous general partners, Compliant retained a 99% partnership interest in CPR L.P. and performed various services related to the License Agreement. Specifically, Compliant "supplied Hutchins with sales reports, royalty payments, patent license fee payments and all other transactions covered by the License Agreement." (Dkt. No. 89, Pl.'s Statement of Undisputed Facts in Supp. Pl.'s Mot. Summ. J. ¶ 3.)

On November 23, 1999, Plaintiff attempted to terminate the License Agreement by issuing a "Notice of Termination,"

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<sup>6</sup> In a services agreement dated September 19, 1994, Steven W. Lindseth signed on behalf of County Line, the general partner of CPR L.P., and on behalf of Catalog Products, the general partner of County Line. (Dkt. No. 66, Ex. C, Lindseth Aff., Ex. 2, Services Agreement 4.)

<sup>7</sup> The record does not indicate the name of County Line's corporate successor or when this entity assumed County Line's general partnership interest.

alleging a breach of § 3.10.<sup>8</sup> Five days later, on November 28, 1999, Plaintiff issued a "Final Notice of Termination" in which he claimed the same misconduct.

On December 15, 1999, Compliant responded on behalf of CPR L.P. and County Line and asserted that no breach of § 3.10 had occurred.<sup>9</sup> Compliant further advised Plaintiff that if he did not reply by December 31, 1999, Compliant would consider his termination notices null. Plaintiff did not respond and later acknowledged that his efforts to terminate the License Agreement were unsuccessful.

The next significant action occurred in January of 2001, when Plaintiff, represented by counsel at the time, informed Compliant of his belief that the License Agreement entitled CPR Prompt to "7.5% of the proceeds of any sale by any partner/member/shareholder of Compliant . . . and not simply on Compliant's interest in CPR [L.P.]." (Dkt. No.

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<sup>8</sup> The License Agreement provides that in the event of a material breach by one party, the other party may terminate the agreement by giving ninety days written notice. (License Agreement § 8.2.)

<sup>9</sup> Compliant's response seems to have come six months before the corporation was actually created. (See Dkt. No. 84, Ex. 1, Compliant Corp. v. Donald C. Hutchins, et al., No. CV 04 540066, Compl. ¶¶ 12, 13.)



40, Ex. N, Letter from Gary E. Martinelli, counsel for Plaintiff, to Steven W. Lindseth, President, Compliant at 3 (Jan. 15, 2001).) In a letter to Steven Lindseth, Plaintiff's counsel provided the following rationale for Plaintiff's position:

In the course of the drafting of the License Agreement, you informed Don Hutchins that, inasmuch as County Line had separate lines of business including Christmas tree stands and birdhouses, you intended to form a new entity to be controlled by County Line for the purposes of conducting the business to be built around the invention covered by the License Agreement. You indicated that the new entity would raise venture capital from outside investors.

Accordingly, Section 3.10 was incorporated into the License Agreement providing for the creation of an "Affiliate" and for the payment of 7.5% of the proceeds of any sale by a "partner" (intended to include County Line and any outside investors) of the Affiliate to CPR Prompt. Consistent with this, Section 4.9(d) of the License Agreement provided that the Affiliate would provide and update the names and addresses of the investor partners to CPR Prompt . . . .

[Instead,] County Line [seems to have] proceeded with two affiliated companies, one to hold the rights under the License Agreement (CPR [L.P.]) and another (now Compliant Corporation) to actually raise venture funding, to conduct the business and to own CPR [L.P.]. It appears that [Compliant's] thinking is that while CPR Prompt may be entitled to 7.5% of the proceeds to be derived from the sale of CPR [L.P.], CPR Prompt is not entitled to 7.5% of the proceeds to be derived

from the sale of Compliant . . . .

This interpretation of the License Agreement is completely at odds with the understanding of the parties at the time the License Agreement was executed. The intent was that one "Affiliate" be the holder of the License Agreement, the repository of the venture funding and the operating company. The discussion in Section 3.10 of the consequences of a public offering or a merger would be irrelevant absent this conclusion as would be the undertaking in Section 4.9(d) to provide and update the names of other investors in the Affiliate.<sup>[10]</sup> It is also totally inconsistent with the discussions held with you leading up to the execution of the License Agreement . . . . Finally, it is inconsistent with the early drafts of the License Agreement in which County Line itself was to be not only the licensee but also the investment vehicle. The notion of assigning the license to an affiliate was developed late in our discussions when you sought to separate bird feeder / Christmas tree stand operations from the CPR Prompt business.

(Id. at 1-3 (emphasis in original).)

In conclusion, Plaintiff's counsel requested an

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<sup>10</sup> This provision provides:

[F]or the purposes of Section 3.10, the Affiliate referred to therein shall provide CPR-PROMPT with a list of the names and addresses and resulting ownership percentage of each of the partners or shareholders of such Affiliate and shall update such list whenever such Affiliate sells or otherwise issues additional partnership or equity interests.

(License Agreement § 4.9(d).)

explanation

as to how and why CPR [L.P] was relegated to a dark corner of Compliant's corporate structure when the premise under which the License Agreement we entered into was that the Affiliate, i.e. CPR [L.P], would be the vehicle which would grow the CPR business and the businesses (now the businesses of Compliant) that were related to it.

(Id. at 3.)

In February of 2001, CPR L.P. responded by filing a demand for arbitration with the American Arbitration Association ("AAA"). (Dkt. No. 84, Ex. 3, Demand for Arbitration ¶ 15; see also id. at ¶ 8 (citing the License Agreement's mandatory arbitration provision found in § 8.2).) That same month, Compliant, in its capacity as general partner of CPR L.P., brought an action, captioned Compliant v. CPR Prompt, et al., No. 429394 ("Compliant I"), against Plaintiff's company and Plaintiff in the State of Ohio, Cuyahoga County Court of Common Pleas, seeking a declaratory judgment as to the construction and effect of § 3.10. (See Dkt. No. 66, Ex. D, Compliant's Compl. for Declaratory J. 6.)

While Plaintiff contends that "it was economically

impossible for Hutchins to defend both actions,"<sup>11</sup> the record reflects that Plaintiff did attempt to represent CPR Prompt<sup>12</sup> and that he tendered an answer and asserted counterclaims and cross-claims on his own behalf in the Ohio action.<sup>13</sup> However, the courts of Ohio do not permit a corporation to appear in propria persona. See Perez v. Bush, 631 N.E.2d 192, 194 (Ohio Com. Pl. 1993) (citing Union Sav. Ass'n. v. Home Owners Aid, Inc., 262 N.E.2d 558, 560 (Ohio 1970)). Consequently, on May 30, 2001, the Ohio court in Compliant I entered the following default judgment against CPR Prompt:

Pursuant to Section 3.10 of the License Agreement, in the event that the partners of CPR L.P., including, but not limited to . . . Compliant . . . , sell all [o]r part of their respective partnership interest in CPR L.P. to an unrelated third party, CPR Prompt is entitled to 7.5% of the net proceeds of that sale. Section 3.10 of the License Agreement does not entitle CPR Prompt to

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<sup>11</sup> (Dkt. No. 84, Pl.'s Mem. Controverting Compliant's Statement of Undisputed Facts 3.)

<sup>12</sup> See Hutchins v. Lindseth, No. 01-cv-30120-KPN, slip op. at 4 n.2 (D. Mass. Dec. 17, 2001) ("At oral argument . . . , Plaintiff explained that he appeared pro se in the Ohio action and attempted to represent [his company] as well."), aff'd No. 02-1212, slip op. (1st Cir. Aug. 12, 2002).

<sup>13</sup> (See Dkt. No. 66, Ex. E, Hutchins' Answer & Countercl. & Cross-cl.)

7.5% of the sale of any or all assets of any other entity than CPR L.P.

(Dkt. No. 66, Ex. F, Default J. Entry (May 30, 2001)

(emphasis added).)

On September 5, 2001, the same court allowed Compliant's motion for summary judgment against Plaintiff without comment. (Dkt. No. 66, Ex. F, Summ. J. Entry (Sept. 5, 2001).)<sup>14</sup>

In the summer of 2001, Plaintiff, pro se, brought a two-count action in this court against the Lindseths and five of Compliant's institutional shareholders under the Racketeer Influenced and Corrupt Organization (RICO) Act, 18 U.S.C. §§ 1961 et seq. On December 17, 2001, Magistrate Judge Kenneth P. Neiman allowed the defendants' motion to

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<sup>14</sup> Plaintiff now takes the position that he prevailed in the Demand for Arbitration. (Pl.'s Mem. Controverting Compliant's Statement of Undisputed Facts 4 ("The arbitrators found CPR L.P.'s claims to be bogus and when the arbitrators pushed Compliant for additional evidence, CPR L.P. withdrew from the Arbitration. The arbitrators agreed with Hutchins' reading of § 3.10.").)

This is a somewhat curious characterization of the arbitration proceedings, given that Plaintiff sued the AAA in this court for negligence and breach of contract. See Hutchins v. Am. Arbitration Ass'n, No. 03-cv-30181-MAP, slip op. at 2 (D. Mass. Jan. 22, 2004) (dismissing Plaintiff's claim under the doctrine of arbitral immunity), aff'd No. 04-1167, slip op. (1st Cir. Sept. 14, 2004).

dismiss, finding that Plaintiff had failed to satisfy his burden of establishing personal jurisdiction. Hutchins v. Lindseth, No. 01-CV-30120-KPN, slip op. at 9-10 (D. Mass. Dec. 17, 2001), aff'd No. 02-1212, slip op. (1st Cir. Aug. 12, 2002).

Meanwhile, unbeknownst to Plaintiff, Compliant and CPR L.P. entered into an Asset Purchase Agreement ("APA") with Cardiac Science on October 21, 2003. (Dkt. No. 89, Pl.'s Statement of Undisputed Facts Supp. Pl.'s Mot. Summ. J. 3.) Under the terms of the APA, Compliant, as "the sole general partner of CPR L.P." (Dkt. No. 66, Ex. C, Lindseth Aff., Ex. 3, Asset Purchase Agreement 1), caused CPR L.P. to convey to Cardiac Science all of its "assets, properties, rights, and interests," including the License Agreement (id. at § 1.1A). Compliant also transferred to Cardiac Science "substantially all of [its] assets, properties, rights and interests," but retained its general partnership interest in CPR L.P. (Id. at § 1.2(i).)

In return, Compliant received \$47 million in Cardiac Science common stock. (Dkt. No. 40, Ex. H, Wedbush Morgan



Securities Report 4, Oct. 29, 2003.)<sup>15</sup> According to Plaintiff, in November of 2003, Cardiac Science began to manufacture and sell products covered by Plaintiff's patents and bearing the CPR Prompt® trademark. (Dkt. No. 40, Ex. L., Hutchins Aff. ¶ 12, July 1, 2004.)

In the spring of 2004, Plaintiff noticed that he had not received any royalty payments or reports from Compliant since the previous summer. (Id. at ¶ 8.)<sup>16</sup> When Plaintiff called Compliant's Cleveland headquarters he discovered that CPR L.P.'s general partner was no longer in business. (Id.)

Plaintiff subsequently contacted the law firm of Fish & Richardson and learned that Compliant, for the first time since 1995, had recently failed to pay certain fees related to Plaintiff's patents. Under the circumstances, Plaintiff concluded that Compliant had abandoned his intellectual properties, and he began discussing the possibility of

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<sup>15</sup> As will be discussed, a portion of the total amount of Cardiac Science stock was held in escrow to cover any claims for indemnification made by Cardiac Science against Compliant.

<sup>16</sup> This assertion seems somewhat inconsistent with the copy of a check from Compliant to Plaintiff's company dated December 4, 2003, which Plaintiff attached as an exhibit to his amended complaint. (See Dkt. No. 40, Ex. K, Check No. 053045.)

licensing these properties to another entity. (Id. at ¶ 9.)<sup>17</sup>

On April 29, 2004, Plaintiff received a phone call from a representative of Cardiac Science, who informed Plaintiff that Cardiac Science had acquired his intellectual properties. (Id. at ¶ 11.) After familiarizing himself with the terms of the APA, Plaintiff concluded that the 7.5% exit payment described in § 3.10 of the License Agreement had been triggered. On July 2, 2004, in response to Cardiac Science's refusal to recognize his right to an equity interest of \$3,525,000, Plaintiff filed his original complaint in this action, alleging copyright and patent infringement, negligence, and breach of contract on the part of Cardiac Science.

On July 28, 2004, Cardiac Science issued a demand for indemnity to Compliant based upon Plaintiff's complaint. Compliant responded by bringing a second action against Plaintiff and his company in the Cuyahoga County Court of

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<sup>17</sup> When these discussions broke down, Plaintiff sued that entity in this court alleging claims for breach of contract, patent and copyright infringement. See Hutchins v. Zoll Med. Corp., 430 F. Supp. 2d 24 (D. Mass. 2006) (allowing defendant's motion for summary judgment).

Common Pleas, captioned Compliant v. Hutchins, et al., No. 540066 ("Compliant II"), asserting claims for tortious interference with contract and abuse of process. In its Compliant II complaint, Compliant also sought a declaratory judgment regarding the construction and effect of § 3.10 of the License Agreement and § 1.2(i) of the APA.

According to Plaintiff, Steven Lindseth and his attorneys

recognized that it would be difficult and cost prohibitive for [Plaintiff] to conduct a defense from 800 miles away. Recognizing that [Plaintiff] could not afford representation, they presumed that CPR Prompt would lose by default and that they could use res judicata for leverage against [Plaintiff's] pro se personal defense.

(Dkt. No. 90, Hutchins Aff. ¶ 11, Sept. 6, 2005.)

On September 3, 2004, the day after Compliant served Plaintiff with the Compliant II complaint, Plaintiff filed a motion to join Compliant in this action. During a hearing six days later, this court denied Plaintiff's motion for failure to comply with Local Rule 15.1.<sup>18</sup> Plaintiff

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<sup>18</sup> The court also heard argument on three other motions, including Cardiac Science's motion to dismiss, which the court allowed with respect to Plaintiff's negligence claims, but otherwise denied.

subsequently filed an amended motion to join Compliant, which the court allowed on November 18, 2004.

Pursuant to that ruling, Plaintiff filed an eight-count amended complaint on December 22, 2004, asserting claims of fraud (Count IV), fraudulent misappropriation and sale of patent (Count VI), and breach of contract (Count VIII) against Compliant, and claims of copyright infringement (Count I), patent infringement by means of sales (Count II), patent infringement by means of manufacture (Count III), abuse of process (Count VI), and tortious interference with contract (Count VII) against Cardiac Science.

On January 26, 2005, the Ohio court in Compliant II entered a default judgment against CPR Prompt, finding

- (a) that CPR Prompt ha[d] not effectively terminated the License Agreement . . . ;
- (b) that the partnerships interests in CPR L.P. were not sold to Cardiac Science . . . pursuant to the [APA] . . . ; and
- (c) that the 7.5% payment provision of Section 3.10 of the License Agreement was not triggered by virtue of the [APA].

(Dkt. No. 66, Ex. H, Default J. Entry (Jan. 26, 2005).)

On May 16, 2005, Compliant filed its answer to Plaintiff's amended complaint and brought counterclaims

against Plaintiff for tortious interference with the APA (Count I) and abuse of process (Count II). Because these counterclaims were identical to "claims" Compliant brought in the Compliant II action, Plaintiff did not offer a timely response.

On July 29, 2005, Compliant filed a motion for summary judgment on the claims brought against it by Plaintiff and a motion for default judgment on its counterclaims against Plaintiff. Plaintiff filed an answer to Compliant's counterclaims on August 22, 2005 and a memorandum opposing Compliant's motion for default judgment the following day.

On August 24, 2005, Plaintiff offered his opposition to Compliant's motion for summary judgment. That same day, the Compliant II court granted Compliant's motion for summary judgment against Plaintiff "on the grounds of res judicata and the License Agreement and the [APA]." (Dkt. No. 98, Ex. A., Summ. J. Entry (Aug. 24, 2005).)<sup>19</sup>

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<sup>19</sup> On September 29, 2005, the Ohio court in Compliant II entered judgment against Plaintiff and his company, jointly and severally, in the amount of \$278,384.00. (Dkt. No. 207, Ex. A, Final J. (Sept. 29, 2005).) On July 19, 2006, the same court also awarded attorney fees and costs to Compliant in the amount of \$95,662.82. (Dkt. No. 207, Ex. B, J. Entry (July 19, 2006).)

### III. CROSS MOTIONS FOR SUMMARY JUDGMENT

The purpose of summary judgment is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Johnson v. Gordon, 409 F.3d 12, 16-17 (1st Cir. 2005) (citation omitted). Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In cases where both parties have moved for summary judgment, the basic summary judgment framework remains intact. De Jesus-Rentas v. Baxter Pharm. Servs. Corp., 400 F.3d 72, 74 (1st Cir. 2005) (citation omitted). "The court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." Bienkowski v. Northeastern Univ., 285 F.3d 138, 140 (1st Cir. 2002) (citation omitted).

While the court must alternately draw all reasonable inferences in each nonmovant's favor, each nonmovant "must respond to a properly supported motion with sufficient evidence to allow a reasonable jury to find in its favor